

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SHORELINE
VARIANCE PERMIT DENIED BY THE
CITY OF SEATTLE TO THE BOAT
YARD,

THE BOAT YARD,

Appellant,

v.

THE CITY OF SEATTLE and
STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondents.

SHB No. 86-10

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

THIS MATTER, a request for review of the disapproval by the City of Seattle of a shoreline variance permit sought by The Boat Yard for a floating repair shed on Lake Union, came on for formal hearing before the Shorelines Hearings Board, Lawrence J. Faulk, Chairman and Presiding, Wick Dufford, Rodney M. Kerslake, Nancy R. Burnett, and Robert Schofield, Members, convened at Seattle, Washington, on June 26, 1986.

1 FINDINGS OF FACT

2 I

3 Lake Union and its environs contribute significantly to the
4 distinctive character of Seattle as a city. Adjacent to downtown and
5 totally within the urban area, the lake and its shores support a rich
6 mixture of uses including houseboats and restaurants, moorages and
7 parks, offices and boat yards. The waters are shared by sailboats and
8 tugs, float planes and wind surfers, pleasure cruisers and kayaks.

9 Historically the land along Lake Union was extensively devoted to
10 industrial uses. In recent years industrial activity has increasingly
11 given way to other uses, but the lake still retains some of the
12 quality of a "working lake."

13 This case involves the future of a facility which is a part of the
14 legacy of the lake's older use pattern.

15 II

16 The appellant, The Boat Yard, is a full service marine repair
17 facility which has been in business on the northeastern portion of
18 Lake Union since 1969. It presently provides employment for up to 45
19 people, annually paying around \$1.5 million in wages. Prior to 1969 a
20 similar boat repair business was operated at the same site.

21 III

22 The property in question is roughly a parallelogram. It measures
23 about 287 feet along its westerly boundary on Lake Union. Its
24 southerly boundary from Fairview Avenue East out into the lake is
25 approximately 272 feet. There is some upland, but a major portion of

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1 the parcel is under water. The designated shoreline environment is
2 Urban Stable/Lake Union.

3 Development on the water side of Fairview Avenue East in the
4 vicinity of the Boat Yard includes two yacht sale facilities, two
5 yacht clubs, three other boat repair facilities, two office buildings,
6 and several single family residences and floating homes.

7 IV

8 The subject of this appeal is a floating boat repair shed brought
9 to the property in early 1984. This structure is 36 feet 4 inches by
10 97 feet 4 inches in area. Height above water varies from 18 feet to
11 32 feet 3 inches, with 71% of the shed being 32 feet 3 inches in
12 height. There is a substantial under water component to the shed,
13 necessary to its structural integrity.

14 The floating repair shed is situated in the southwest corner of
15 the property and extends to the west property line. It is placed on
16 the waterward side of an existing building which is 39 feet in height
17 and approximately 1,320 feet long. About one-third of this existing
18 building extends over water.

19 V

20 A smaller and lower shed, (28 feet by 80 feet in area and 25 feet
21 in height) was situated in the same location for a number of years
22 until 1979. It was removed at that time in a state of severe
23 deterioration. It is uncontested that this original shed was a legal
24 non-conforming structure under the Seattle Shoreline Master Program
25 (SSMP).

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1 Numerous other structures, all pre-dating regulation under t
2 Shoreline Act occupy parts of the site, constricting available space
3 for locating any new structures.

4 VI

5 Upon removal of the original repair shed, the Boat Yard
6 investigated the possibility of replacing it. To build such a
7 structure on site turned out to be prohibitively expensive. No
8 replacement already in existence could be found. Such structures are
9 not off-the-shelf items.

10 During the next few years, the marine repair and maintenance
11 business was undergoing an evolution. Larger and taller pleasure
12 boats came into common use. The boat House made a successful attempt
13 to service the large boat market, but to accommodate the demand more
14 space was necessary.

15 Concurrently, new paints, finishes and varnishes became the
16 state-of-the-art in the industry. These materials required a
17 controlled environment for proper application. As a result it became
18 increasingly important for a boat repair business to be able to
19 conduct its operations indoors, safe from variations in weather,
20 temperature and airborne dust.

21 VII

22 The Boat Yard eventually found and purchased a larger and higher
23 floating repair shed suitable for today's business needs at a location
24 in the San Juan Islands. It is a one-of-a-kind facility.

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At the time it was floated to Lake Union and installed at the company's facility, five years had passed since the removal of the original shed.

VIII

These five years, without the additional capacity provided by the new repair shed, had been hard years for the company financially. Losses were heavy and the acquisition of the new repair shed was seen as a key feature in turning the company around.

IX

After the new shed was installed, the City notified the Boat Yard that it must either remove it or obtain the appropriate shorelines approvals. The company sought an interpretation of the SSMP as to whether the repair shed qualifies as a vessel, exempt from permit requirements. On October 19, 1984, the City responded stating that the structure cannot be considered a vessel and that its placement on the site makes it subject to shorelines permit requirements.

X

On February 26, 1985, the Boat Yard completed its initial application for a substantial development permit and variance to allow the covered boat repair shed to occupy the site and to exceed the height limit and the lot coverage limitation set forth in the SSMP.

This application was denied on May 28, 1985, but renewed in November of that year, on the basis of a corrected calculation of lot coverage.

XI

On January 29, 1986, a public hearing was held on the revised application. Six people attended the hearing, four representing the applicant and two members of the public. Three comment letters were received in response to notice of the public hearing; one was in favor and two opposed the granting of the variance.

On March 28, 1986, the variance application was denied. On April 7, 1986, the boat Yard appealed the denial to this Board.

XII

The lot in question contains 63,137 square feet. The average lot size for Lake Union is 81,638 square feet.

Without the new repair shed, lot coverage is 33,048 square feet or 52%. With the new repair shed, coverage is 36,584 square feet or 58%. The applicable lot coverage limitation under the SSMP is 50% (Table I, C.4, SSMP).

XIII

The height limitation for part of Lake Union is 35 feet. However, for the area in question the applicable height limitation is 25 feet. (Table I, C.4, SSMP). The majority of the new repair shed structure extends about 7 feet above the 25 foot limit.

XIV

The shed is constructed of fiberglass panels and plywood and is painted a bright blue to match the rest of appellant's development on

1 the property. Though noticeable, the appearance of the development is
2 not so out of harmony with surrounding development as to constitute an
3 aesthetic affront.

4 XV

5 The impact on views of the seven feet which exceed the height
6 limitation is de minimis. No view corridor is required on the
7 property. No adverse non-visual environmental effects from placement
8 of the repair shed are apparent.

9 XVI

10 On the record before us, we find that there is no other practical
11 location for the new repair shed on the Boat Works property. We are
12 also persuaded that the additional capacity provided by this floating
13 structure cannot practically be provided by any other structure
existing on the site.

15 XVII

16 Moreover, appellant cannot simply build the equivalent of the
17 repair shed on the property without exceeding the height limitation or
18 the present lot coverage. Such an effort would be both physically and
19 practically infeasible.

20 XVIII

21 Finally, we are convinced that the placement of the repair shed on
22 appellant's property is essential to the continuance of its
23
24
25

1 business. If the shed must be removed, we find, more likely than n
2 the Boat Yard will close its doors and its owner will convert the
3 property to office or moorage or some other use which is not an aspect
4 of the "working lake" environment.

5 XIX

6 Any Conclusion of law which is deemed a Finding of Fact is hereby
7 adopted as such.

8 From these Findings of fact the Board comes to these

9 CONCLUSIONS OF LAW

10 I

11 The Board has jurisdiction over these parties and these issues.
12 RCW 90.58.180.

13 II

14 Appellant, having requested review, bears the burden of proof in
15 this proceeding. RCW 90.58.140(7).

16 III

17 SSMP 24.60.315A allows the continuance of uses in existence as of
18 March 17, 1977 which do not conform to the shoreline program. We
19 conclude, however, that the installation of the new repair shed, some
20 five years after its significantly different predecessor was removed,
21 is not merely the continuance of an existing non-conforming use.

22 SSMP 24.60.315D allows rebuilding to the same configuration a
23 nonconforming structure destroyed by fire or other act of nature.
24 Again, that is not the situation presented in this case.

25

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2 We hold that the repair shed now on the site must be treated like
a new development at the location in question.

3 IV

4 Nothing brought to our attention shows that the placement of the
5 repair shed violates the policies of the Shoreline Management Act
6 (SMA), RCW 90.58.020. The use is consistent with prior and present
7 uses of the neighborhood, has no demonstrated adverse environmental
8 impacts and is the very sort of water dependent development which the
9 statutory policy seeks to encourage.

10 Further, Table 2, SSMP lists marine construction, repair, and
11 dismantling as a permitted use in the Urban Stable/Lake Union (US/LU)
12 environment. Thus, the planning process mandated by the SMA endorses
13 the activity sought to be carried out.

14 V

15 Therefore, the only questions that remain are whether variance
16 from the bulk and dimensional standards of the SSMP can be allowed in
17 this instance. We are obliged to evaluate the development in light of
18 WAC 173-14-150, made applicable by incorporation in SSMP 24.60.180.

19 VI

20 Pertinent provisions of WAC 173-14-150, effective when the
21 variances were applied for, are as follows:

22
23 The purpose of a variance permit is strictly limited to
24 granting relief to specific bulk, dimensional or performance
25 standards set forth in the applicable master program where
there are extraordinary or unique circumstances relating to

1 the property such that the strict implementation of the master
2 program would impose unnecessary hardships on the applicant or
thwart the policies set forth in RCW 90.58.020.

3 (1) Variance permits should be granted in a circumstance
4 where denial of the permit would result in a thwarting
5 of the policy enumerated in RCW 90.58.020. In all
instances extraordinary circumstances should be shown
and the public interest shall suffer no substantial
detrimental effect.

6 (3) Variance permits for development that will be
7 located...waterward of the ordinary high water mark
8 (OHWM), as defined in RCW 90.58.320(2)(b)...may be
authorized provided the applicant can demonstrate all of
the following:

9 (a) That the strict application of the bulk, dimensional, or
10 performance standards set forth in the applicable Master
Program precludes a reasonable use of the property not
11 otherwise prohibited by the Master Program.

12 (b) That the hardship described in WAC 173-14-150(3)(a)
13 above is specifically related to the property, and is
14 the result of unique conditions such as irregular lot
shape, size, or natural features and the application of
the Master Program, and not, for example, from deed
restrictions or the applicant's own actions.

15 (c) That the design of the project will be compatible with
16 other permitted activities in the area and will not
cause adverse effects to adjacent properties or the
17 shoreline environment designation.

18 (d) That the requested variance will not constitute a grant
19 of special privilege not enjoyed by the other properties
in the area, and will be the minimum necessary to
afford relief.

20 (e) That the public rights of navigation and use of the
21 shorelines will not be adversely affected by the
granting of the variance.

22 (f) That the public interest will suffer no substantial
23 detrimental effect.

24 (4) In the granting of all variance permits,
25 consideration shall be given to the cumulative impact of
additional requests for like actions in the area...

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VII

We hold that the WAC 173-14-150(1) will be violated unless these variances are granted. Denial of the variances sought here would result in a thwarting of the policy of RCW 90.58.020. That policy calls for a planned approach to development to foster "all reasonable and appropriate uses." What is "reasonable and appropriate" of course varies by location, with urban settings subject to very different criteria than unspoiled natural ones.

Here the planning process has produced a special set of considerations for Lake Union. SSMP 24.60.350 states the following for the US/LU environment:

The purpose of the US/LU environment is similar to the purpose of the US environment, but also incorporates additional goals based on the particular characteristics of Lake Union.

- A) Enhance the form and appreciation of Lake Union and environs as a major component in Seattle urban structure;
- B) Preserve a maximum of open water commensurate with reasonable economic development;
- C) Develop a diversity of commercial and residential activities related to the use and enjoyment of the waterfront, the service and maintenance of water-dependent and water-related activities, and public access to the water;
- D) Encourage multiple use concepts having a wide range of intensity while preserving view of the water from upland and adjacent properties; and
- E) Eliminate physical and visual blight from areas surrounding Lake Union and Portage Bay.

We believe this statement of goals is designed to preserve a "working lake," coexistent with a wide diversity of other uses. The

1 boat repair business is precisely the kind water dependent activity
2 which fits within the planning concept.

3 Under the facts of this case, denial of the variance would run
4 counter to the fostering of a kind of use which is "reasonable and
5 appropriate" for this specific and special urban environment.

6 VIII

7 As noted, the use carried on at the Boat Yard is expressly
8 permitted in the US/LU environment. As we view the facts, the likely
9 consequence of strict application of the lot coverage and height
10 restrictions here will be to eliminate the permissible activity now
11 carried on at the site. We hold that this probable result is
12 tantamount to precluding a reasonable permitted use of the property
13 and, thus, that the requirements of WAC 173-14-150(3)(a) are met.

14 IX

15 Further, we conclude that the hardship involved here is the result
16 of unique conditions related to the property and of the application of
17 the master program in these unique conditions.

18 The extant development of the parcel, without the new repair shed,
19 must be considered as a condition relating to the property. The
20 development did not occur in response to modern shoreline regulation.
21 The pre-existing structures effectively and uniquely condition the
22 practical possibilities for placement of the repair shed.

23 The repair shed is needed to carry on a permitted use, but is
24 itself a one-of-a-kind item of fixed and unalterable dimensions.

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Under these circumstances, WAC 173-14-150(3)(b) is met when the master program's lot coverage and height restrictions are applied. See generally, R. Andersen, American Law of Zoning 3d, Sec. 20.37.

X

Absent evidence of use conflicts in this neighborhood of broadly mixed uses, or of adverse environmental effects, the project is consistent with WAC 173-14-150(3)(c).

Because the placement and operation of the particular repair shed as proposed is uniquely necessary for the permitted use, and no alternative less violative of lot coverage and height restrictions appears to be available, the development satisfies WAC 173-14-150(3)(d).

We have found no impairment of navigation, nor other impacts detrimental to the public interest and, therefore, WAC 173-14-150(3)(e) and (f) will not be violated by granting the variances sought.

XI

This case turns on its own peculiar and distinctive facts. We think it highly unlikely that any repetition of similar facts will arise in the area. The amount of variance sought is not major--8% in lot coverage, seven feet in height. We believe this is the extent of effects likely to flow from approving appellant's request. We do not believe the request can properly be rejected on the basis of probable cumulative impacts under WAC 173-14-150(4).

XII

Any Finding of Fact which is deemed a Conclusion of Law is hereby adopted as such.

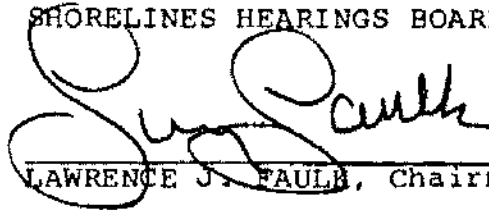
From, these Conclusions the Board enters this


ORDER

The decision of the City of Seattle to deny an application for shoreline variance made by The Boat Yard for a repair shed is reversed.

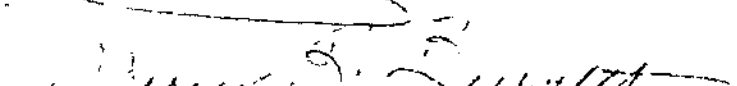
DONE at Lacey, Washington, this 31st day of December, 1986.

SHORELINES HEARINGS BOARD

 12/30/86
LAWRENCE J. FAULK, Chairman


WICK DUFFORD, Lawyer Member


RODNEY M. KERSLAKE, Member


NANCY R. BURNETT, Member

Not Available for Signature
ROBERT SCOFIELD, Member